

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of

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**TracFone Wireless Petition That It
Be Designated As An Eligible
Telecommunications Carrier In
Connecticut and Massachusetts**

) **CC Docket No. 96-45
DA 04-3800**

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**Comments Of:
Fred Williamson and Associates, Inc. (“FW&A”)**

BACKGROUND AND SUMMARY OF COMMENTS

Fred Williamson and Associates, Inc. is a consulting firm that serves rural Local Exchange Carriers (LECs) in Kansas and Oklahoma. The rural LECs represented by FW&A (rural LECs) provide service to areas with low population densities that are costly to serve. Universal service revenue is a major portion of the recovery of the high costs of service for these rural LECs. This revenue is absolutely vital to the rural LECs to insure the maintenance and provision of facilities that allow the delivery of affordable universal services as required by the Act. It is critical that the Commission not jeopardize nor compromise the existing universal service support mechanisms that allow rural companies predictable and sufficient recovery of the costs associated with providing universal service by granting the TracFone Petitions and providing unneeded support to TracFone.

In its Public Notice dated December 1, 2004, the Commission requested comment on the following TracFone Wireless, Inc. (TracFone) petitions:

- June 8, 2004 Petition that, with respect to its Eligible Telecommunications Carrier (ETC) application, it not be required to provide service using at least some of its own facilities, but be allowed to provide its universal service offerings as an ETC solely through resale.
- November 9, 2004 Petitions for designation as an ETC in the states of Connecticut and Massachusetts.

FW&A urges the Commission to promptly dismiss these Petitions. The June 8, 2004 Petition must be dismissed because, if granted, the provision of support to TracFone for only resale of universal services would provide unneeded support to TracFone and would violate Section 214(e)(1)(A) of the Act. The November 9, 2004 ETC designation Petitions must be dismissed because TracFone cannot meet even the most basic of ETC designation requirements outlined in Section 214(e)(1)(A) of the Act.

COMMENTS

A. Universal Service Support Is Only Necessary When An ETC Provides Service With Its Own Facilities

An ETC's receipt of universal service support is premised on:

- Providing the quality supported universal services at just, reasonable and affordable rate levels.
- A need for support to recover the costs of facilities used to provide the universal services that cannot be recovered at the just, reasonable and affordable universal service rate levels.

The need for support is inextricably linked with the cost of an ETC's provision of facilities that are used to provide universal services. In other words, if a carrier maintains and provisions facilities used to provide universal services, that carrier will have a universal service support requirement if the cost of those facilities exceeds the revenues generated by the universal service rates charged to customers. The Commission has recognized this fact by basing the support for ETCs on costs. For rural LECs, support is determined based on their level of actual or embedded costs of facilities used by those

carriers to provide universal services. For non-rural LECs, support is determined based on their level of forward-looking costs estimated to be used by these carriers to provide universal services. For all non-LEC ETCs, support is determined based on the facility cost or support level of the LEC in whose area the non-LEC has been designated as an ETC.

If, on the other hand, a carrier has facility costs that do not exceed the affordable universal service rate or has no facility costs at all, then that carrier has no need for universal service support.

The requirement that there be costs to provide and maintain facilities in order to qualify for and receive universal service support is, not only common sense, but is mandated by the Act in Section 214(e)(1)(A).

An ETC must “...offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services...”

This provision of the Act insures that competitive carriers who are able to serve only a portion of a LEC’s service area with their own facilities are not denied ETC status and thus support for their facility costs. The Act allows these carriers to meet the Section 214(e) requirement to serve throughout the area by utilizing resale to provide service where it does not have facilities and thus to receive support for the facilities it has deployed. Support is only received for lines served with the competitive carrier’s own facilities. At odds with TracFone’s petitions, a competitive carrier does not have a need

for support and does not (and should not) receive support for lines served through resale of another carrier's universal service offering.

B. Support Is Not Required For Universal Services Provided By An ETC Through Resale Of Another Carrier's Services.

A carrier such as TracFone or another potential ETC may provide service by reselling the universal services of an incumbent wireline LEC or, as apparently TracFone does, it may resell the services of other wireless carriers. In neither case is universal service support needed by a reselling carrier such as TracFone.

If the competitive ETC provides service by reselling the universal services of a wireline LEC, the LEC receives the universal service support (if needed) for its facility cost to provide the resold line in excess of the universal service rate and provides the service to the reselling ETC such as TracFone at a discounted rate level. The discount is to allow TracFone enough margin so that it can cover its billing and other overhead costs and still provide the universal service offering at a competitive rate that is less than or equal to the universal service rate of the wireline LEC. As a consequence, the reselling ETC such as TracFone has no costs above an affordable universal service rate level and therefore has no need for universal service support for the resold line and should receive no support for the resold line.

If the competitive carrier resells the offerings of other wireless carriers, in part, or for its entire universal service offering as TracFone does, it should pay no more for those services to the wireless reseller than it would pay to the wireline LEC.

In effect, the LEC's wholesale universal service resale price is the maximum market based price that TracFone or any ETC using resale to provide the required universal services should pay. A resale payment by TracFone in excess of the LEC resale price is either for additional functionality (such as mobility, etc.) not mandated as a universal service or is a choice by TracFone to pay an inefficient and inflated resale price if only the required universal service functionalities are purchased. In neither case should TracFone receive universal service support. If TracFone chooses to purchase additional functionality not required to provide universal service or if it simply chooses to pay an inefficient price, it certainly has that right, but it has no right to recover the cost of these additional functionalities or inefficiencies from the universal service fund.

C. TracFone's Petition Does Not Meet The Forbearance Requirements

Essentially TracFone is requesting that the Commission ignore the Section 214(e)(1)(A) and Section 254 requirements of the Act in order to provide TracFone with unneeded universal service support. TracFone provides no facilities and thus has no basis to claim that it needs support because its facility costs are higher than its affordable universal service rate level. Instead, TracFone claims that it must pay higher resale costs to wireless resellers. As discussed previously, these higher costs can only be for non-supported services, at odds with Section 254 of the Act, or for inefficiencies.

In its Petition, TracFone mischaracterizes the Section 214(e)(1)(A) facilities-based requirement. TracFone claims that the requirement that carriers use their own facilities is not necessary to insure that rates are just, reasonable and affordable, and not unreasonably discriminatory. In fact, Section 214(e)(1)(A) is a requirement that facilities be utilized by a carrier, if it seeks high cost universal service support.

FW&A agrees with TracFone, that the provision of just, reasonable and affordable rates that are not unreasonably discriminatory and can be accomplished through resale of another carrier's services. However, if a carrier is to be designated as an ETC and receive universal service support, Section 214(e)(1)(A) requires that the carrier receive cost only for high cost of facilities provided and not for resale where support is unneeded. TracFone argues, wrongly, that customers will not be harmed if TracFone provides services supported by the universal service program by reselling the services of other carriers. In fact, the public, consumers and competitors will be harmed. The public and consumers will be harmed by paying unneeded support for either inefficient resale rate choices made by TracFone or by paying support for additional services purchased under the TracFone resale agreement, that have not been designated as universal services by the Joint Board and Commission. This unneeded universal service support funding requested by TracFone needlessly inflates the federal universal service funds and causes unneeded increases in payments by consumers. These additional and unneeded payments clearly harm consumers. Competition is also harmed by granting TracFone's Petitions. If TracFone is successful in having the universal service funds pay for services (such as mobility) that are not part of the universal service definition, it will obtain a competitive advantage over other facility based carriers, including wireless carriers that are unable to fund the cost of these services through universal support. Granting TracFone's Petition will not promote competition and will not serve the public interest.

For these reasons, TracFone's Forbearance Petition must be rejected. Finally, the Commission must also reject TracFone's ETC petitions. Both the Petition for Forbearance and the ETC petitions are directly at odds with the plain language of Section 214(e)(1)(A) of the Act and therefore must be rejected by the Commission.

Respectfully submitted by,

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